IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2816 OF 2005

The Punjab and Maharashtra
Cooperative Bank Ltd. ... Petitioner

Vs.

The Chief Metropolitan Magistrate,
Esplanade, Greater Bombay and Ors... Respondents

Mr. D.D. Madon, Sr. Advocate with Mr. B.H. Prasad Sarma for Petitioner.

Mr. S.P. Bharti for R. No. 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: AUGUST 28, 2006

P.C.:

. Rule. Heard forthwith.

. Appearance put up on behalf of Respondent Nos. 2. The respondent Nos. 3 to 8 are the borrowers who though have been served are not before this court. Affidavit of service taken on record.

. The Petitioners herein had served notice on Respondent Nos. 3, of which respondent Nos. 4 to 7 are the directors and has taken possession of the security pursuant to notice dated 14.12.2004 under section 13(4) of the Securitization Act. An appeal was preferred by Respondent Nos. 3, 4, 6 and 7 being S.A. No. 14 of 2005 which came to be decided by an order dated 6.6.2005. The Petitioner, herein therefore,

moved under Section 14 of the Securitization Act. By order dated 11.7.2005, application for assistance of the court was allowed and the Deputy Registrar was directed to take possession of the Secured assets as set out therein.

3. In the meantime, it appears that Respondent No. 2 filed a suit before the Civil Judge, (Senior Division) Allahabad being O.S. No. 1096 of 2004 in which the Petitioner and Respondent Nos. 4, 5 6 and 7 were made parties. It appears that on 24.12.2004, defendants other than the Petitioner, filed Vakalatnama. The matter was adjourned to 22.1.2005 and both the parties were directed to maintain status regarding the property in dispute. If the order is correctly read, it would mean that the parties had put in their appearance before the court. It is an admitted position that on that date the Petitioners were not served nor had put in appearance.

. Based on that order, Respondent No. 2 moved an Intervenor's Application before the Magistrate pointing out that there was an order in his favour by a civil court and in these circumstances, the earlier order of 11.7.2005 should not be given effect to. The learned Magistrate found favour with the contentions as urged on behalf of Respondent No.2 herein and consequently by order dated 18.10.2005 stayed proceedings untill

further orders. It is this order, which is the subject matter of the present petition.

4. On behalf of the Petitioner, the learned counsel submits that in respect of the subject matter, which is covered by the provisions of the Securitization Act, there is a total ouster of jurisdiction of civil Court. The learned counsel relies on the provisos of Section 34 and 35 of the Act which reads as under :

> "34. Civil court not to have jurisdiction :- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).
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> 35. The Provisions of this Act to override other laws : The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any

instrument having effect ;by virtue of any such law."

. It is therefore, submitted that once the appeal preferred, by the borrower, was dismissed by D.R.T. under the provisions of the Securitzation Act, no civil court would entertain any application in respect of the subject matter of the secured assets which was the subject matter of the appeal and in these circumstances, Respondent No. 1 acted without jurisdiction in staying the order dated 21.7.2005. If it is the case of any person that the property is not a secured property or they have a prime security in their favour, the objection will be field before the authorities under the Securitization Act.

. On the other hand, on behalf of the Respondent No. 2, their learned counsel points out that the Petitioner has already appeared before the civil court and filed their written statement and what the learned Magistrate has done is to stay the proceedings till the civil court decides the issue and in these circumstances, as there is a substantive order of a civil court, this court ought not to interfere in the exercise of its extra ordinary jurisdiction as the Petitioner have a remedy at law.

5. We have heard the learned counsel. In this case,

some facts and material on record may now be noted. The notice under Section 13(2) was issued on 28.9.2004. The suit was filed on 24.12.2004. The civil court is presently seized of the suit field by Respondent No. 2. One of the reliefs is the secured property. The question is whether this court in the exercise of its extra ordinary jurisdiction should interfere with the order of the Magistrate who is subject to the supervisory jurisdiction of this court.

. The Securitization Act has been enacted with a view to permit the financial institutions as defined thereunder to make recovery of their dues. If the process now set in motion by Respondent No. 2 is encouraged, that would only mean that the entire purpose of the Act and its object would be frustrated. A borrower dissatisfied with an order passed under Section 13(4), can put up any person or claim by creating a cause in a jurisdiction in any court in this country. As can be seen from the Roznama of the Civil court, the defendant borrowers put an appearance but did not disclose the notice under Section 13(4) of the SEcuritization Act but asked Plaintiff that the Petitioner have to obtain an exparte order to frustrate the recovery under the provisions of the Securitization Act. It is in these circumstances, that this court must consider whether it should exercise its extra ordinary jurisdiction. In the instant case, as we have

pointed out that after the possession was taken under Section 13(4), of the Securitization Act, an appeal was preferred by the borrower which appeal was dismissed though subsequent to the exparte order. In other words, the subject matter of the dispute was in issue under the provisions of the Securitization Act. Once the property is the subject matter of a notice under Section 13(4) or under Section 17 of the Securitization Act, then no civil Court would have jurisdiction to entertain any suit or proceedings in respect of the subject matter which was the subject matter in proceedings under the provisions of the Securitization Act. The provisions of Section 34 and Section 35 will oust the jurisdiction of the civil court.

. Considering the above, we are clearly of the opinion that the respondent No. 1 was not bound to take into consideration the order of status quo as ordered by the civil court as the subject matter of the dispute was clearly beyond the jurisdiction of the civil court. In the light of that, in our opinion order dated 18.10.2005 is liable tobe set aside and order dated 11.07.2005 will have to be acted upon. Consequently, the following order :

. Rule made absolute in terms of Prayer Clauses (a) and (b).

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**